

____.B. NO. _____

A BILL FOR AN ACT

RELATING TO THE HAWAII CIVIL RIGHTS COMMISSION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to support the
2 Hawaii civil rights commission in carrying out article I,
3 section 5, of the Hawaii Constitution, which provides that "no
4 person shall ... be denied the enjoyment of the person's civil
5 rights or be discriminated against in the exercise thereof
6 because of race, religion, sex or ancestry." This Act addresses
7 the Hawaii supreme court's concerns in SCI Management Corp. v.
8 Sims, 101 Hawaii 438, 451 (2003), that "as HRS chapter 368 is
9 currently written, a respondent before the HCRC is entitled to a
10 jury trial with respect to claims that seek traditional forms of
11 legal relief." This Act clearly makes the commission's
12 administrative process enforce the "public right" of non-
13 discrimination in the exercise of one's civil rights so that the
14 commission's enforcement section can do so without being
15 required to prove its case twice, once before the five
16 commissioners and a second time before a jury. This Act also

____.B. NO. _____

1 recognizes that the parties may agree to resolve the complaint
2 through the use of alternative dispute resolution methods.

3 SECTION 2. Chapter 368, Hawaii Revised Statutes, is
4 amended by adding to part II a new section to be appropriately
5 designated and to read as follows:

6 "~~§368-~~ **Exclusive public process.** Neither complainant
7 nor respondent may request a notice of right to sue or otherwise
8 voluntarily remove itself from the commission process and
9 proceed to court."

10 SECTION 3: Section 368-12, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "~~[§]§368-12[§]~~ **Notice of right to sue.** The commission may
13 issue a notice of right to sue ~~[upon written request of the~~
14 ~~complainant.]~~ after a no reasonable cause determination is made
15 or the complaint is dismissed. A right to sue will not be
16 issued at the request of either complainant or respondent, or
17 after a withdrawal of a complaint. Within ninety days after
18 receipt of a notice of right to sue, the complainant may bring a
19 civil action under this chapter. ~~[The commission may intervene~~
20 ~~in a civil action brought pursuant to this chapter if the case~~
21 ~~is of general importance.]~~"

____.B. NO. _____

SECTION 4. Section 368-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) After the filing of a complaint, or whenever it appears to the commission that an unlawful discriminatory practice may have been committed, the commission's executive director shall make an investigation in connection therewith. At any time after the filing of a complaint but prior to the issuance of a determination as to whether there is or is not reasonable cause to believe that part I of chapter 489, chapter 515, part I of chapter 378, or this chapter has been violated, the parties may agree to resolve the complaint through a predetermination settlement~~[-]~~, including use of alternative dispute resolution methods. If the parties agree to resolve the complaint, the commission may dismiss the complaint after the complainant notifies the executive director and withdraws the complaint in writing."

SECTION 5. Section 368-16, Hawaii Revised Statutes, is amended to read as follows:

[~~+~~]**§368-16**[~~+~~] **Appeals; de novo review; enforcement procedure.** (a) A complainant and a respondent shall have a right of appeal from a final order of the commission~~[, including cease and desist orders and refusals to issue charges]~~ in a

____.B. NO. _____

1 contested case hearing or a petition for declaratory relief only
2 in the [circuit] supreme court [for the circuit in which the
3 alleged violation occurred or where the person against whom the
4 complaint is filed, resides, or has the person's principal place
5 of business.] by filing a notice of appeal within thirty days
6 after service of the final order. An appeal before the
7 [circuit] supreme court shall be reviewed de novo. [If an
8 ~~appeal is not taken within thirty days after the service of an~~
9 ~~appealable order of the commission, the commission may obtain an~~
10 ~~order for the enforcement of the order from the circuit court~~
11 ~~that has jurisdiction of the appeal.] Within sixty days after~~
12 the filing of the notice of appeal, the commission shall
13 transmit to the supreme court the original or a certified copy
14 of the entire record upon which the order is based, including a
15 transcript of the testimony. The commission's copy of the
16 testimony shall be available at reasonable times to all parties
17 for examination without cost.

18 (b) Where a complainant or respondent [~~petitions~~] files
19 [~~for~~] an appeal to the [circuit] supreme court, the commission
20 shall be a party to any proceeding as the appellee. The non-
21 appealing complainant or respondent shall have the right to
22 [~~intervene~~] be a party to any proceeding as an appellee.

____.B. NO. _____

1 (c) A proceeding for [~~review or~~] enforcement of [~~an~~
2 ~~appealable~~] a commission order is initiated by filing a petition
3 in the circuit court[-] ~~for the circuit in which the alleged~~
4 violation occurred or where the person, company, or corporation
5 against whom the complaint is filed, resides, or has its
6 principal place of business. The commission may obtain a court
7 order for enforcement of its order upon showing that a copy of
8 the petition for enforcement was served on the respondent, that
9 the respondent is subject to the jurisdiction of the court, that
10 the order sought to be enforced is an order of the commission,
11 regularly entered, and that the commission has jurisdiction over
12 the subject matter and the respondent. Copies of the petition
13 shall be served upon the parties of record. [~~Within thirty days~~
14 ~~after the service of the petition upon the commission or filing~~
15 ~~of the petition by the commission, or within further time as the~~
16 ~~court may allow, the commission shall transmit to the court the~~
17 ~~original or a certified copy of the entire record upon which the~~
18 ~~order is based, including a transcript of the testimony, which~~
19 ~~need not be printed. By stipulation of the parties to the~~
20 ~~review proceeding, the record may be shortened. The court may~~
21 ~~grant temporary relief as it considers just, or enter an order~~
22 ~~enforcing, modifying and enforcing as modified, or setting aside~~

____.B. NO. _____

1 ~~in whole or in part the order of the commission, or may remand~~
2 ~~the case to the commission for further proceedings. The~~
3 ~~commission's copy of the testimony shall be available at~~
4 ~~reasonable times to all parties for examination without cost.]~~

5 The final judgment or decree of the circuit court for
6 enforcement of a commission order shall be subject to review by
7 appeal in the same manner and form as other appeals from that
8 court.

9 ~~[(d) The final judgment or decree of the circuit court~~
10 ~~shall be subject to review by appeal in the same manner and form~~
11 ~~as other appeals from that court.]~~

12 ~~[(e) A proceeding under this section shall be initiated~~
13 ~~not more than thirty days after a copy of the order of the~~
14 ~~commission is received, unless the commission is the petitioner~~
15 ~~or the petition is filed under subsection (d). If a proceeding~~
16 ~~is not so initiated, the commission may obtain a court order for~~
17 ~~enforcement of its order upon showing that a copy of the~~
18 ~~petition for enforcement was served on the respondent, that the~~
19 ~~respondent is subject to the jurisdiction of the court, that the~~
20 ~~order sought to be enforced is an order of the commission,~~
21 ~~regularly entered, and that the commission has jurisdiction over~~
22 ~~the subject matter and the respondent.] "~~

____.B. NO. _____

1 SECTION 6. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$300,000, or so much
3 thereof as may be necessary for the fiscal year 2005-2006, and
4 the same sum, or so much thereof as may be necessary for fiscal
5 year 2006-2007, to carry out the purposes of this Act, including
6 the hiring of necessary staff. The sum appropriated shall be
7 expended by the civil rights commission.

8 SECTION 7. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 8. This act shall take effect on July 1, 2005.

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12 INTRODUCED BY: _____

13 BY REQUEST

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